

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS

Call to Order: By **CHAIRMAN DANIEL FUCHS**, on January 18, 2001 at 3 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Daniel Fuchs, Chairman (R)
Rep. Joe Balyeat, Vice Chairman (R)
Rep. George Golie, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Debby Barrett (R)
Rep. Paul Clark (D)
Rep. Ronald Devlin (R)
Rep. Tom Facey (D)
Rep. Nancy Fritz (D)
Rep. Gail Gutsche (D)
Rep. Larry Jent (D)
Rep. Jeff Laszloffy (R)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Allen Rome (R)
Rep. Jim Shockley (R)
Rep. Donald Steinbeisser (R)
Rep. Bill Thomas (R)
Rep. Brett Tramelli (D)

Members Excused: None.

Members Absent: Rep. Steven Gallus (D)

Staff Present: Linda Keim, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 292, 1/18/2001
Executive Action: HB 99 and HB 185

HEARING ON HB 292

Sponsor: REPRESENTATIVE DAN FUCHS, HD 15, BILLINGS

Proponents: John Gibson, Billings Rod and Gun Club
Bill Orsello, Montana Wildlife Federation
Robin Cunningham, Fishing Outfitters of America
Stan Frasier, representing himself
David Dittloff, Montana Wildlife Federation
Bob Raney, Montana State Parks Foundation
John Bloomquist, Montana Stockgrowers
Dave McClure, Montana Farm Bureau
Paige Dringman, Montana Landowners Alliance
Jean Johnson, Montana Outfitters and Guides
Bob Gilbert, Walleyes Unlimited
Jeff Haggener, Fish, Wildlife and Parks

Opponents: Paul Sihler, Fish, Wildlife and Parks

Opening Statement by Sponsor:

REPRESENTATIVE DAN FUCHS, HD 15, Billings, stated the purpose of this Bill is to create a fishing access enhancement program to provide incentives to landowners who provide access to or across private land for public fishing; providing for increased fishing access at public road bridge crossings; adding a fee to the cost of resident and nonresident wildlife conservation licenses, and dedicating the revenue to the fishing access enhancement program; including fishing access enhancement within the scope of issues that may be considered by the Governor's Review Committee on private lands and public wildlife.

Proponents' Testimony:

John Gibson, Billings Rod and Gun Club, Magic City Fly Fishers, Public Land Access Association, stated they support HB 292. He points out that in some places, there are lots of fishing access points, but they are oriented toward float fishing. For example, on the Big Horn River, if you left a fishing access point at Three Mile and floated 10 miles, you would not see one bank fisherman. Many people, particularly the young and the elderly, do not have the means necessary to rent a boat, buy a boat, or hire an outfitter. Stretches of the Yellowstone are the same. New access sites are needed around Billings, because of the population size there. This is not a huge expenditure by any one individual. In the past, sportsmen have always been willing to pay their own way thru self imposed excise taxes on the equipment

we use. This can be done again by a contribution on the conservation license to HB 292.

Bill Orsello, Montana Wildlife Federation, stated he is in favor of HB 292, and he is the Chair of the citizens component of the Montana Fish and Wildlife Conservation Fund, known as the Baucus Trust. This is a perpetual fund, and the proceeds of this private trust will be used on a yearly basis to provide hunting and fishing opportunities, access and conservation easements. They are currently forming parameters of how the money will be given, and are looking for public input as to where the need is the greatest. An expression of that is through matching funds on things like access. This is a great opportunity for the state.

Robin Cunningham, Fishing Outfitters Association, states they also support HB 292. It offers a market based solution to access problems, it will relieve access problems at established fishing access sites by providing other space for people to go to, and because they support **Representative Fuchs**.

Stan Frasier, representing himself, stated that sportsmen, and the public in general, are always willing to pay when they think they are getting something in return. I think it is a good idea, and hope you will support adding this small fee to increase public access for public rivers.

David Dittloff, Montana Wildlife Federation, said they believe HB 292 will improve opportunities for both resident and nonresident anglers, particularly for bank fishing, and possibly for fishing on beaver ponds that are completely surrounded by private land. It is based on the block management program; having a fee on the conservation license which has been a successful program that MWF is supportive of. It is similar to something put forward by Governor Martz in the election campaign. Regarding the fee, it is only \$2 for residents. It is a user fee that the vast majority of sportsmen will support. It will improve access for areas we can't reach now, or might not be able to reach in the future. It won't be seen as a tax, but as a program that will benefit sportsman access.

Bob Raney, Montana State Parks Foundation, stated they support the policy of expanding opportunity in Montana, especially fishing access, in state parks. MSPF doesn't feel Montana residents have enough places to go and be by themselves, away from the hubbub of the tourist season. MSPF doesn't take a position on the fee. MSPF feels you should have the legislative auditor come before the committee and give a run down on how FWP finances work and how much money is in their fund balances, etc. More needs to be known about how the flow of revenue works in the

department before applying another fee. Experience has shown that private landowners have a built in fear of having these properties near them, and a lot has been done to protect adjacent landowners from ending up with something they don't want in their neighborhood. One of these started back in 1991, and it said that before fishing access sites could be created, that there had to be public involvement. It is called "The 495 Rules", but in the statute it is 23-1-110, **EXHIBIT(fih14a01)**. This is being given to you to show those of you that have fears about the growth of the system. There is plenty of public involvement, and plenty of opportunity to stop growth in areas where the neighbors don't want it. This statute guarantees that the citizens have input. Last session we passed the "Good Neighbor Policy", statute 23-1-126, **EXHIBIT(fih14a02)**, which insures that when recreational facilities are located near private landowners, that their lifestyle is protected. If they don't want flood lights at a fishing access site or a park, they should have the opportunity to have input on it. The last thing we did last session was make sure the public access sites were properly maintained before we developed them. Maintenance and development are hard to define. If you buy a site and put a road in, you have developed it. The definition of maintenance is in statute 23-1-127, **EXHIBIT(fih14a03)**. We hope you will move ahead with giving Montana citizens more recreational opportunities, especially on our rivers and streams.

John Bloomquist, Montana Stockgrowers Association, represents many ranchers throughout Montana. The idea of block management for the hunting program was something they supported initially. They also support HB 292 with one caveat. MSA would try to address access issues in Section 1 by looking at the concept of leasing instead of permanent easements. By starting with a lease, you are likely to get more landowner interest. The second point is on Page Two, Lines 6-9. The issue of public access to rivers and streams at public road bridge crossings is an unsettled issue. Bridge crossings and whether they provide public access to a stream or river depend upon the bridge crossing and how it was created. It depends upon the scope of the easements for the property that is associated with that public right of way. The legality question of access on many public roads is unanswered. If lines 6-9 and related discussion were pulled out of this Bill, it would remove a very contentious issue and allow this program to go forward and provide some access across private land to get to a stream or river. MSA would also like consideration about notifying landowners in the area that public access is going to be increased. Also, you should consider the benefits that are contemplated. Should the landowner be able to get a certain amount of money to apply as they see fit, or do benefits have to fit into these particular

categories. Block management, increasing access to the public is one of the positive aspects of this bill. MSA wants to have a bill that hits the ground running, without a lot of controversy.

Dave McClure, Montana Farm Bureau, speaking for 9,000 family memberships. MFB supports the bill and supports the idea that the landowners providing this recreational opportunity get some type of compensation. There are some expenses that arise in clean up and correcting mistakes that have been made. MFB welcomes the fact that the landowner participates in the guidelines that go along with this recreational opportunity. He gave a personal example from last year of an area on this land that in only two years had become somewhat of a dump. He had some fishermen friends who approached him about coming to clean it up, and ended up with about 20 people who came and helped remove three large truckloads. MFB also wants you to be sure there is some protection for the landowner from liability.

Paige Dringman, Montana Landowners Alliance, stated a few members have controversy over a bridge on the Stillwater River. Their concerns echo those of **John Bloomquist, MSA**. In general they support the bill and any voluntary effort to provide access between landowners and fishermen. Subdivision Four in Section One is not in keeping with the rest of the Bill. It creates a controversy and defeats the efforts to convince those people that FWP would like to work with them on a voluntary basis. There are still a lot of legal questions surrounding the validity of public access at bridge crossings, whether there is an easement there, whether the department of transportation holds it in fee, whether the easement may physically accommodate access, and whether there is language in easement that may prohibit access. In fact, on the Stillwater there is some language in easement entered into with the Department of Transportation that does prohibit access. They are concerned regarding the remainder of Sub 4 where funds could be used to purchase or lease public fishing access. Again on a voluntary basis, MLA would support. Another question; New Section 1, Sub 2 which states the department may also develop similar efforts outside the scope of the block management program that are designed to promote public access across private lands for fishing purposes. I don't know what that means. If this provision stays in, I would like to see the word "voluntary" added.

Jean Johnson, Montana Outfitters and Guides Association, stated they support the concept of an enhancement program for the anglers of Montana. Their concern is there has been no committee; this is just a blueprint from the earlier program that just exchanged the words "fishing access enhancement" for "hunting access". This group needs to have their own private

lands council or an overlapping member, or be directed to meet more often. The current private lands council is overloaded and doesn't meet often enough to handle everything they need to. They have not had the time to take up the issue of the outfitting industry. Another concern is a Bill coming from that council that would raise the conservation fee by \$2 to further enhance the number of landowners and the number of acres that will be available in the hunting block management program. If you can do both that is fine, but we wouldn't want to lose one to have the other. Maybe this bill could travel a parallel course with the one that isn't here yet.

Bob Gilbert, Walleyes Unlimited stated they support the concept of additional access for sportsmen, both men and women, across the state of Montana, for fishing purposes. One caveat was mentioned, he also serves on the board of directors of Montana Weed Control Association and the Noxious Weed Fund Advisory Council. He states that he is not representing either one, but would like to see this Committee consider requiring that a portion of the funding be used by the department to fight noxious weeds on these sites. If this isn't done, certainly they will be coming to the trust fund for grants to fight weeds. We have a mechanism now that would address that problem. Those that create the problem would be paying for it with a user fee.

Jeff Haggener, Fish, Wildlife and Parks. Only written testimony was presented, as he was not able to attend **EXHIBIT(fih14a04)**.

Opponents' Testimony:

Paul Sihler, Fish, Wildlife and Parks, states FWP has reviewed this Legislation carefully and they find that the existing fishing access site program already gives the department the authority and the funding to meet most of the objectives of this Bill. In fact, FWP is doing many of things this Bill calls for. For example, they currently lease 27 parcels from private landowners to provide fishing access as well as several easements. They worked with the private landowners to provide maintenance, parking, weed control and roads where appropriate. Long term leases and right of ways have been negotiated. Further legislation is not necessary to expand this approach. The fishing access site program is funded with \$1.00 from each resident and \$5.00 from each nonresident fishing license. The program was funded at \$630,000 this biennium. Usually most of the authorized amount is spent, but this time there does not appear to be the need for purchasing or leasing fishing access sites. Our principal limitation is the availability of suitable sites and regional manpower to make landowner contacts and develop proposals. Beyond our basic position that the department already

has a funding program to accomplish most of the objectives of this Legislation, there are a few specifics of this Legislation that I would like to mention. The Bill mixes block management concepts with land acquisition in a way that is confusing for FWP when looking at implementing it. It is not clear how the block management concept of tangible benefits exclusion of outfitters interact with the land components of long term arrangements, permanent easements, right of ways and construction of facilities. Specifically, Section 1, Sub 2 refers to "outside the scope of block management", but we are not clear what is inside and what is outside. Also, Section 2, Sub 7 caps payments to a landowner at \$8,000 a year, which is the same as the block management program. But, if we are purchasing a long term easement or a right of way, that doesn't work. Payments would be made up front in the first year, and there aren't any future payments. The \$8,000 cap is too limiting to do that. It is not clear if the Legislation makes a distinction between long term agreements and the block management approach. If there is this distinction, we are not clear if the tangible benefits apply to one of them or both. The use of the term "block management" creates some confusion for hunters and anglers. People know block management as a place to hunt. There may be some confusion about whether you can hunt on a fishing block management area or whether you can fish on a hunting block management area. A number of people in the current hunting block management area, which is hunting only, are calling and asking whether they can fish on it also, which they cannot. Fwp suggests you delete the term "block management" and consider using the less confusing words "fishing access enhancement program". As noted earlier, the fishing access site program appears to be adequately funded at this time. The department would prefer not to see earmarked accounts funded by an increase in the conservation license. This limits flexibility the department would like in future funding activities. With the exception of the private landowner assistance agreements mentioned in this Bill, FWP thinks most of this can be accomplished under the existing fishing access site program. We agree, however, that private landowner assistance to those that provide public access is a good idea, and efforts should be directed to that. We have not put a priority on that to date. In HB 2 this session, FWP has requested some funds for a pilot program to provide for assistance to private landowners in the form of litter control, signing, fencing, parking and other means to deal with issues surrounding public access. In light of the interest in the priority that there clearly is in this Bill, and the concern about access at other than department sites, we are willing to request that the Appropriations Sub Committee increase the pilot program to \$50,000 annually, combined with funding in the current fishing access program, and add one half FTE for field staff to seek additional opportunities on private land and administer land owner assistance. We could

then develop the program, evaluate it, and report back at the next session. Thank you.

Questions from Committee Members and Responses:

REPRESENTATIVE GALLUS asked **PAUL SIHLER, FWP**, if he was positive he wasn't an opponent, rather than an informational witness.

PAUL SIHLER replied yes, he was sure. The question was raised about private landowner assistance, and the decision package related specifically to landowner assistance and fishing access sites is in our budget. Yes, we are very much supportive of the concept of working with private landowners for the right to access across their land, but we don't think there is any authority in this Bill that we don't already have.

REPRESENTATIVE GALLUS stated, then you are in support of the concept, but opposed to the Bill. **PAUL SIHLER** stated that FWP thinks there are some problems of a confusing nature, but wouldn't say they are opposed to the Bill.

REPRESENTATIVE FACEY stated, by accepting this Bill, does this weaken a fisherman's right to have a friend drive his car across the bridge, stop the car in the middle of the bridge, jump into the middle of the creek, then walk down the middle of the creek and fish it? **Robin Cunningham, Fishing Outfitters Association**, answered he had no legal qualifications to answer the question.

REPRESENTATIVE FACEY then asked the same question of **Paige Dringman, Montana Landowners Alliance, and an attorney**, who answered there is nothing in the Bill specifically prohibiting this.

REPRESENTATIVE BALYEAT stated his concern is that while a \$2 additional fee on avid fishermen spread out over a number of days is quite minimal, there are many fishermen who fish only one day a year. How much does it currently cost for a conservation license and a fishing license? **PAUL SIHLER** replied \$13 for the fishing license and \$4 for a conservation license if you are a resident. **REPRESENTATIVE BALYEAT** stated that as the Bill is drafted now, the \$2 fee goes on the conservation license; would someone who is not a fisherman be paying the \$2? **PAUL SIHLER** replied that after buying a conservation license, the \$2 charge would apply when you used it to purchase a fishing license. So if you were purchasing that conservation license to go hunting, you would not pay the \$2.

REPRESENTATIVE BALYEAT stated there are some legislators who have taken a pledge not to increase mandatory fees, or their constituents have said they don't want mandatory sportsmen's fees raised. If this Bill were amended to remove the \$2 mandatory fee increase, and a substitute funding mechanism were put in to

provide an optional fishing access permit to your license, you could only use the fishing access sites if you pay the fee. Would it still be acceptable? **REPRESENTATIVE FUCHS** refers to another Bill he is sponsoring to eliminate the state land access fee. That Bill is currently dead in Natural Resources. The only problem is that it would be deceptive. There are 25-30 people every year who get fined \$50 by FWP on the state land access fee because they didn't know where they were. It should go on the conservation license so you know exactly what you are getting, when and where. **REPRESENTATIVE FUCHS** states there is no problem taking the fee out, however, the department's testimony is a little unsettling. Considering this Bill has been in the hopper for quite some time, he has never heard FWP to discuss why our time here today is unnecessary.

REPRESENTATIVE CLARK stated, knowing the disposition of this Committee toward mandatory fees, there is another Bill coming forward to support the block management program which would also tack a fee on the conservation license. In light of **PAUL SIHLER's** testimony that there is already an access program in place, and an increase in fee here could potentially jeopardize the increase in the block management program, do you have any comments about what your stand is? **DAVID DITTLOFF, Montana Wildlife Federation**, states that while the department might have the authority to do this, there is not the funding or the concrete direction that this Bill provides. After listening to testimony, there are a few small problems with the Bill that could be worked out with amendments. I think MWF would be supportive of most of the amendments and ideas that have been proposed. As far as how this message meshes with the block management program, the conservation fee increase, and the bill that is forthcoming, we are very supportive of it, the philosophy is the same with it. Prioritizing is difficult. It depends on our membership; basically who hunts more and who fishes more. If it comes down to one or the other, maybe we could vote an increase of \$1 on each of them. They are both priorities.

REPRESENTATIVE BALES referred to Page Two, New Section Two, "A landowner is not eligible for inclusion in the fishing access enhancement program if outfitting or commercial fishing restricts public fishing opportunities on the landowner's property". What is the rationale. Even if someone had a private fishing pond they are using, if they would allow access to a river that runs through their place, what would be wrong with going for an easement to get to the river. **REPRESENTATIVE FUCHS** said he had no problem with that, but would defer to **John Gibson, Billings Rod and Gun Club**, who stated it would have to be exactly the same property. This individual could have a private fishing pond on his property and have a corridor through his property to a river,

and he would not be ineligible as a result of this. They are trying to prevent a double standard, i.e., the outfitter or a commercial fishing operation on this pond, and then some kind of selective public fishing as well. Here we are talking commercial and noncommercial fishing on the same piece of land. If that owner had a different piece of land for his commercial fishing, he would not be ineligible. **REPRESENTATIVE CLARK** stated, if it is a fishing outfitter using that river, you don't want to take an easement from him to get to that river to allow the public there, so it appears you are giving him a better opportunity. **John Gibson** stated he didn't think that was what he said. If he has an operation that includes a fishing pond as a commercial fee operation, we would not expect him to be eligible to allow the public into that same pond. However, if he wants to have a corridor to the river, once you get to the river, under the high water mark everyone is equal.

REPRESENTATIVE DEVLIN asks for an estimate of revenue on this fee of \$2 for resident, \$4 for nonresident. **REPRESENTATIVE FUCHS** deferred to FWP. **PAUL SIHLER, FWP** responded that \$800,000 to \$850,000 is the estimate. The fiscal note has not come through.

REPRESENTATIVE GALLUS stated for the record, that based on the department's testimony by **PAUL SIHLER, REPRESENTATIVE GALLUS** would request that **PAUL SIHLER's** testimony for FWP be entered as in Opposition to HB 292. Opinions were given; that was opposition testimony, it wasn't informational. **VICE CHAIRMAN BALYEAT** advised that the Committee would confer on that.

Closing by Sponsor:

REPRESENTATIVE FUCHS closed by stating this is another piece of legislation brought to improve access for residents of Montana, and commented that he doesn't care about the fee. It would have been helpful to sit down with the department ahead of time, to see what they are doing and how they are doing it, as it might have saved some time here today. **REPRESENTATIVE FUCHS** states it is important to move the Bill forward, put it into Statute, eliminate the fee, and take into consideration several of the amendments that have been offered to give FWP an actual blueprint to follow. This will be discussed further in Executive Action.

Hearing Closed on HB 292. REPRESENTATIVE FUCHS returns as **Chair** for the remainder of the meeting.

{Tape : 1; Side : B}

EXECUTIVE ACTION ON HB 99

Motion: REPRESENTATIVE DEVLIN moved that HB 99 DO PASS.

Discussion: None

Motion/Vote: REPRESENTATIVE DEVLIN moved that HB 99 DO PASS.

Motion Carried Unanimously. 19-0.

EXECUTIVE ACTION ON HB 185

Motion: REPRESENTATIVE GALLUS moved that HB 185 DO PASS.

Discussion: REPRESENTATIVE FACEY asked that REPRESENTATIVE GALLUS summarize the Bill. REPRESENTATIVE GALLUS stated that the 1999 law created a youth combination license that currently costs \$25. A Sunset was put on in case it did not work. REPRESENTATIVE FACEY asked if that raised the age from 16 to 17. REPRESENTATIVE GALLUS replied that age was contained in the amendments which FWP had put together. CHAIRMAN FUCHS determined that Legislative Staffer Doug Sternberg had not been asked to draft an amendment, but decided to proceed with Executive Action.) REPRESENTATIVE GALLUS stated that he would like to clarify the amendment to see if there was any opposition to it and directed the committee's attention to the amendment suggested by FWP. REPRESENTATIVE GALLUS stated this amendment seeks to clarify a position in the law where the opportunity is there for someone to purchase a license legally when they are 17 and possess the license for that year after their 18th birthday. Under current law, they are in violation. What we want to say with this amendment is that if you turn 17 in that license year and purchase the combination license, then you turn 18 in the middle of that year, you don't have to get an adult license to finish out that year. But you do need to purchase it when you are 17. Legislative Staffer Doug Sternberg stated that the actual amendment is on Page Two, Section Three, Sub 2 of FWP amendments, and only purchasing the license after you turn 18 would be in violation.

Discussion: REPRESENTATIVE JENT agreed it is a good amendment.

Motion/Vote: REPRESENTATIVE GALLUS moved that Amendment for HB 185 DO PASS. Motion Carried Unanimously. 20-0.

Motion/Vote: REPRESENTATIVE GALLUS moved that HB 185 DO PASS AS AMENDED. Motion Carried Unanimously. 20-0.

EXECUTIVE ACTION ON HB 264

CHAIRMAN FUCHS stated this is **REPRESENTATIVE LEWIS'** Bill and there were amendments mentioned. Since no one had followed up on this with Legislative Staffer Doug Sternberg to get amendments drawn up, **CHAIRMAN FUCHS** asked who would be interested in working with Doug. He stated that it is not the Bill sponsor's responsibility to draw up the amendments. **VICE CHAIRMAN BALYEAT** stated he had already had some preliminary discussion with Doug and wasn't aware they were going to take Executive Action today or would have had it ready. **REPRESENTATIVE RIPLEY** said he was waiting for comments from his constituents. **CHAIRMAN FUCHS** postponed Executive Action on HB 264.

ADJOURNMENT

Adjournment: 4:15 P.M.

REP. DANIEL FUCHS, Chairman

LINDA KEIM, Secretary

DF/LK

EXHIBIT (fih14aad)